

REMARKS

A. Allowable Claims

The Applicants wish to thank the Examiner for indicating that claim 5 would be allowable if it was written in independent form to include all of the features of any intervening claim. However, the Applicants submit that claim 5 is allowable in its present form for at least the reasons set forth below.

B. The 35 U.S.C. § 102 Rejections

Initially, the Applicants note that there appears to be a typographical error in the Office Action. While the subheading and substance of the first rejection is aimed at U.S.C. § 102(e) and claims 1, 2, 6, 8, 9 and 12 the Examiner mentions claims 3, 4, 7, 10, 11, 13 and 14 and U.S.C. § 103. The Applicants respectfully request clarification of the rejection. Nonetheless, assuming the rejections are aimed at claims 1, 2, 6, 8, 9 and 12 and U.S.C. § 102(e) the Applicants respond as follows.

Claims 1, 2, 6, 8, 9 and 12 appear to be rejected under 35 U.S.C. § 102(e) as being anticipated by Callon, U.S. Patent No. 6,256,295 B1 ("Callon"). The Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Of the rejected claims, claims 1, 6, 8 and 12 are independent claims. It is to these claims that Applicants now turn, it being understood that the remaining claims depend on these claims and, therefore, the remarks which follow apply equally to these claims as well.

As the Applicants have previously pointed out, each of the independent claims of the present invention includes the feature of assigning a link resource selected from link resources that have been released for connecting to a neighboring node by using at least one predefined

sequence to avoid contention resulting from a connection request, where the at least one predefined sequence resulted from a negotiation with a neighboring node prior to receipt of the connection request.

In the present Office Action the Examiner takes the position that “path 80” shown in Figure 4C of Callon is the same as the claimed predefined sequence. This is incorrect.

As the Examiner knows well, though claims may be interpreted broadly any interpretation must be consistent with the specification, *In re Hyatt*, 211F.3d 1367, 1372 (Fed. Cir. 2000).

Specifically, the phrase “predefined sequence” in the claims of the present invention means at least a sequence for allocating link resources within a single node. For example, as shown in Figure 4 of the instant specification, one optical cross-connect (OXC) node agrees to assign link resources from the top-down to its ports, while another OXC node assigns link resources from the bottom-up to avoid a conflict over the allocation of ports and wavelengths for a link (See lines 15-18, page 6 in the specification in conjunction with Figure 4). In contrast, path 80 in Figure 4C of Callon is a path used to select a next node, not a port within a node, in multiple-node paths. In sum, the Examiner’s interpretation of Callon’s path 80 as being the same as the claimed predefined sequence is inconsistent with the specification and, therefore, impermissible.

In addition, the claims of the present invention include the feature of “assigning a link resource selected from link resources that have been released for connecting to a neighboring node by using at least one predefined sequence wherein the at least one predefined sequence resulted from a negotiation with the neighboring node prior to receipt of [a] request”. Callon does not disclose (or suggest) the claimed negotiation.

Rather, as Callon itself explains the “link state packets” received by node 50 are from every node within a network (Callon, column 4, lines 19-29), not from a negotiation with a neighboring node prior to the receipt of a connection request.

Accordingly, because Callon does not disclose each and every feature of claims 1, 6, 8 and 12, it cannot anticipate these claims and their associated dependent claims under 35 U.S.C. § 102(e). The Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1, 2, 6, 8, 9 and 12.

C. The 35 U.S.C. § 103 Rejections

Claims 3, 4, 7, 10, 11, 13 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Callon. The Applicants disagree and traverse these rejections for at least the following reasons.

Initially, the Applicants note that each of claims 3, 4, 7, 10, 11, 13 and 14 depends from one of independent claims 1, 6, 8 and 12 and are, therefore, patentable over Callon for the reasons set forth above.

Further, as the Examiner acknowledges Callon does not disclose methods “implemented in an optical transport network” as in claims 3, 4, 7, 10, 11, 13 and 14. Nonetheless, the Examiner appears to take the position that, based on her own personal knowledge, such a feature is obvious to one skilled in the art.

The Applicants respectfully submit that the Examiner’s purported personal knowledge is not a proper basis for rejecting the claims because it is not based on fact, just opinion. The Applicants respectfully request that the Examiner either submit an affidavit setting forth facts to substantiate her position, cite additional art substantiating her position or withdraw the rejections.

In sum, the Applicants respectfully request withdrawal of the rejections and allowance of claims 3, 4, 7, 10, 11, 13 and 14.

Should there be any outstanding matters that need to be resolved in the present application the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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